

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RIGOBERTO MARTINEZ-ALVAREZ,

Plaintiff,

v.

No. CV 02-321 BB/LAM

UNIVERSITY OF NEW MEXICO, UNM
POLICE OFFICERS CHRIS CRESPIAN and
TODD JAMES,

Defendants.

MEMORANDUM OPINION

This matter comes before the Court for consideration of a summary judgment motion filed by Defendants (Doc. 6). Having considered the submissions of Defendants and the applicable law, the Court will grant the motion and dismiss this case.

Defendants filed their motion for summary judgment on August 20, 2002, and Plaintiff failed to file a response to the motion. The Magistrate Judge, on October 29, 2002, filed an order allowing Plaintiff additional time to respond, until November 7. In that order Plaintiff was warned that if he failed to respond the motion could be granted. To date, Plaintiff has not responded.

Rather than simply granting the motion for summary judgment on the basis of Plaintiff's failure to respond, the Court has examined the motion to ensure that it has merit. The most generous reading of Plaintiff's complaint is that he is raising a civil rights claim based on the alleged theft of his property by the arresting officers, named Defendants above. Plaintiff may also be alleging that he was arrested because he is Hispanic and of Cuban origin. The attachments to Defendants' motion for summary judgment, however, contain assertions of fact negating Plaintiff

claims. First, the attachments reveal that the arresting officers had a warrant for Plaintiff's arrest, and acted pursuant to that warrant. This is prima facie evidence that the basis of the arrest was not discrimination. Second, the attachments reveal that all of Plaintiff's personal property was stored and inventoried at the jail to which he was taken, and that none of it was appropriated by the arresting officers. This is prima facie evidence that the arresting officers did not steal any property from Plaintiff. Since Plaintiff did not respond to the motion, he has failed to introduce any evidence conflicting with Defendants' factual showing. Therefore, Plaintiff has not raised a genuine issue of material fact with respect to any of his claims, and the motion for summary judgment must be granted.

Dated this 21st day of May, 2003.



BRUCE D. BLACK
United States District Judge

ATTORNEYS:

For Plaintiff:

Rigoberto Martinez-Alvarez, pro se

For Defendants:

Sean Olivas